

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
SAS NAGAR (MOHALI)

MA No. 45 of 2019
&
Appeal No. 74 of 2019

M/s Parkwood Developers Pvt. Ltd., 10th Floor, Hemukunt
Chambers, 89, Nehru Place, New Delhi-110019.

....Appellant

Versus

Naminder Singh, H.No. 83, Young Dwellers Society, Sector-49-
A, Chandigarh-160047.

....Respondent

Present: Mr. Navdeep Kalair, Advocate on behalf of Mr. Suvir
Kumar , Advocate for the appellant.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

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JUDGMENT: (*Mahesh Grover (J) (Retd)*): (oral)



I have heard counsel for the applicant on the question of compliance with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act).

The proviso to sub Section 5 of Section 43 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), postulates that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, "without the

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promoter first having deposited with the Appellate Tribunal, atleast thirty per cent of the penalty or the total amount to be paid to the allottee including interest and compensation" etc.

Section 43 (5) of the Act, reads as follows: -

- (5) *Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.*

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is heard."



A perusal of the aforesaid proviso and other provisions of the Act, leave no ambiguity that a precondition to the entertaining of an appeal is the deposit of amounts awarded by the Authority or the Adjudicating Officer, in terms of proviso to Section 43 (5) of the Act. The Act does not empower the Tribunal to reduce the amount so awarded or condone the default in depositing the amount so awarded. The Appellate Tribunal being a creation of the Real Estate (Regulation and Development), Act, 2016 (hereinafter referred to as

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the Act), is bound by the proviso to Section 43 (5) of the Act to dismiss an appeal filed by a promoter without deposit of amounts awarded by the Adjudicating Authority/Authority as provided by the proviso to Section 43(5) of the Act.

Admittedly the applicant-appellant has not deposited any amount awarded by the Authority, whether towards refund or interest, leaving this Tribunal with no other option but to hold that the appeal cannot be entertained and to dismiss the appeal accordingly.

The appeal is therefore dismissed as not maintainable for failure to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development), Act, 2016.



Sd/-

JUSTICE MAHESH GROVER (RETD.)

CHAIRMAN

February 10, 2020
AN

Certified To Be True Copy
Sudhakar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh